

1
2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**
5
6

7 WILLIAM LYON HOMES, INC., a
8 California corporation fka PRESLEY
HOMES,

9 Plaintiffs,

10 v.

11 CHARLES LESLIE PARTINGTON,
12 d/b/a M.C. MOJAVE CONSTRUCTION,
et al.,

13 Defendants.

Case No. 2:09-CV-0473-KJD-GWF

14
15 **ORDER**

16 Presently before the Court is Defendants' Motion to Dismiss (#10). The Court has also
17 received and considered Plaintiffs' Opposition (#13) and the Reply (#14). Defendants seek dismissal
18 of Plaintiffs' causes of action for Champerty and Maintenance and violation of Nevada's Deceptive
Trade Practices Act.

19 **FACTUAL BACKGROUND**

20 This case arises out of the offer of Defendant M.C. Mojave (formerly CDS) to provide home
21 inspections to homeowners in developments built by Plaintiff William Lyon Homes, Inc. The
22 inspection is to check for building code violations and provide reports. With the reports, the
23 homeowners may obtain legal counsel and/or file a Nevada Revised Statutes Chapter 40 Notice
24 against the homebuilder requesting repair. If homeowners are successful in obtaining recovery from
25 the builder, Defendants are to be paid for inspection services from the proceeds obtained from the
26 builder.

1 **CHAMPERTY AND MAINTENANCE**

2 Plaintiffs contend that the homeowner's action of initiating a claim makes possible the
3 recovery by Defendants of fees in mediation of the demand or subsequent suit. Accordingly,
4 Defendants' payment is contingent on recovery by the homeowner. According to Plaintiffs, this
5 arrangement constitutes the tort of Champerty and Maintenance.

6 Champerty and Maintenance are legal concepts that are rarely asserted in modern legal
7 practice. Black's Law Dictionary, Ninth Edition defines champerty as:

8 1) An agreement between an officious intermeddler in a lawsuit and an litigant by
9 which the intermeddler helps pursue the litigant's claim as consideration for receiving
10 part of any judgment proceeds; Specif., an agreement to divide litigation proceeds
between the owner of the litigated claim and a party unrelated to the lawsuit who
supports or helps enforce the claim.

11 However, courts have almost unanimously recognized that an agreement by which the attorney
12 is to receive a contingent fee, i.e., a certain part of the avails of a suit or an amount fixed with
13 reference to the amount recovered to be valid as long as the attorney does not agree to pay the
14 expenses and costs of the action. (Black's citing Walter Wheeler Cook, "quasi-contracts" in 1
15 American Law & Procedure, 129 (1952).)

16 In modern practice, arrangements by which doctors and other providers are to be paid through
17 medical and other liens, is considered unobjectionable. In Nevada, a construction defect claimant
18 may recover the costs of any experts retained to ascertain the nature and extent of the constructional
19 defects, evaluate appropriate corrective measures and estimate the value of loss of use and reduction
20 of market value of the residence. (N.R.S. 40.655).

21 There is no Nevada statute on champerty and maintenance. While there are reported cases
22 recognizing the concept as an affirmative defense to claims of breach for breach of contract, there are
23 no reported cases supporting application to tort claims or other affirmative relief as presently sought
24 by Plaintiffs.

25 In the instant action, there has been no allegation or showing that Defendants purchased an
26 interest in any lawsuit, that there is actual litigation occurring as a result of one of the reports, that

1 Defendants have funded a lawsuit, or received proceeds from a lawsuit. Moreover, Defendants'
2 activities are commercial speech protected under the First Amendment to the U.S. Constitution.
3 Accordingly, Defendants' Motion to Dismiss Plaintiffs' claims for Champerty and Maintenance
4 should be granted.

5 **NEVADA DECEPTIVE TRADE PRACTICES ACT**

6 Plaintiffs assert that Defendants were not properly licensed to prepare or communicate
7 inspection reports under N.R.S. 645.B.080 without the state licences required by N.R.S. 598.0923.
8 Even if the Court assumes for purposes of present discussion that a license is required under N.R.S.
9 645B.080 for the subject inspection and report, Plaintiff, as a private party, would not have standing
10 to enforce the Act or exert a private right of action for such violation. While victims of consumer
11 fraud may bring civil action under N.R.S. 41.600, the homeowner would be the victim of any
12 consumer fraud under Nevada's Deceptive Trade Practices Act for performance of services without
13 being properly licensed. The Court is not persuaded that Plaintiff has the right to insert itself into a
14 transaction between Defendants and the homeowners for purposes of consumer fraud or that Plaintiffs
15 are victims within the meaning of N.R.S. 41.600.

16 Accordingly, Plaintiffs' claim for violation of Nevada Deceptive Trade Practices Act must
17 fail.

18 **CONCLUSION**

19 The Motion of Defendants to Dismiss (#10) is **GRANTED**, in part.

20 IT IS ORDERED that Plaintiffs' claims for Champerty and Maintenance and violation of
21 Nevada's Deceptive Trade Practices Act are **DISMISSED** for failure to state a claim upon which
22 relief can be granted.

23 DATED this 30th day of March, 2010.

24
25
26



United States District Judge
Kent J. Dawson